

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

VAUGHN MITCHELL,

v.

COASTLINE CAPITAL FUND 7, LLC

§
§
§
§
§

CIVIL ACTION NO. 4:22-cv-00393

**PLAINTIFF'S RESPONSE TO DEFENDANT'S
MOTION TO DISMISS**

COMES NOW Vaughn Mitchell, Plaintiff herein, filing this Response to Defendant's Motion to Dismiss and would respectfully show the Court as follows:

BACKGROUND

1. Plaintiff is a borrower on a mortgage loan secured by his residence located at 505 Marleen Street, Houston, TX 77034 (the "Property").
2. Plaintiff filed Cause No. 2022-05412; Vaughn Mitchell v. U.S. Bank, N.A.; In the 55th Judicial District Court of Harris County, Texas (the "State Case") contesting the foreclosure sale of his Property by Defendant and alleging causes of action against Defendant for Declaratory Judgment, Breach of Contract, Violation of Texas Property Code §51, and Violations of the Texas Debt Collection Act.
3. Defendant removed the State Court case to Federal Court on February 7, 2022. Defendant filed its Motion to Dismiss on February 18, 2022.
4. The parties then engaged in the Court's standard discovery protocol.
5. As a result, Plaintiff filed his First Amended Complaint on March 9, 2022. Defendant then filed its Second Motion to Dismiss on March 30, 2022 to which Plaintiff responds at this time.

ASSESSMENT OF THE CASE

4. When Plaintiff filed his Original Petition in the State Court case, the issues to be resolved were:

- A. Did Defendant send proper notices to Plaintiff in compliance with the Texas Property Code as well as the Deed of Trust.
 - B. Did the Court sign the Partial Default Judgment as to Defendant Vaughn Mitchell in Case No. 4:21-cv-1801; U.S. Bank v. Vaughn Mitchell, et al; In the United States District Court for the Southern District of Texas – Houston Division.
- This is an expedited foreclosure matter; therefore, a final Court Order is required in order for the lender to foreclose on the Property.

5. As a result of the standard discovery protocol which has been implemented by this Court, the parties were able to determine that the answer to Part A above is “yes”; however, the answer to Part B remained uncertain. Accordingly, Plaintiff filed his First Amended Complaint.

6. As a result of Defendant filing its second Motion to Dismiss, Plaintiff has now learned that the answer to Part B above is also “yes”.

7. Accordingly, as a result of the information learned during the standard discovery protocol as well as the motions practice, Plaintiff agrees that Defendant’s Motion to Dismiss should be granted.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that the Court GRANT Defendant’s Motion to Dismiss and for such other and further relief, both general and special, at law or in equity, to which Plaintiff may be entitled.

Respectfully submitted,

VILT AND ASSOCIATES - TX, P.C.

By: /s/ Robert C. Vilt
ROBERT C. VILT
Texas Bar Number 00788586
S.D. Bar No. 20296
Email: clay@viltlaw.com
5177 Richmond Avenue, Suite 1142
Houston, Texas 77056
Telephone: 713.840.7570
Facsimile: 713.877.1827
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2022 the foregoing was filed with the Court via the CM/ECF system and that the Clerk of the Court will forward a copy of same to the following CM/ECF users:

Mark D. Cronenwett
Nicholas M. Frame
Mackie Wolf Zientz & Mann, P.C.
14160 North Dallas Parkway, Ste 900
Dallas, TX 75254

By: /s/ Robert C. Vilt
ROBERT C. VILT